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6 Attorney for Defendant
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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON
10 HONORABLE REBECCA PENNELL

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 Jose Francisco Aguirre,
15 Defendant.

No. 1:25-CR-2016-RLP-1

Defendant's Sentencing
Memorandum

16
17 Jose Francisco Aguirre, by and through his attorney, Jennifer
18 Barnes, for the Federal Defenders of Eastern Washington and Idaho,
19 hereby submits his sentencing memorandum. For the reasons explained
20 below, Mr. Aguirre recommends a sentence of 12 months plus 1 day
21 imprisonment, to be followed by five (5) years of supervised release. Mr.
22 Aguirre maintains such a sentence is sufficient but not greater than
23

24 Defendant's Sentencing Memorandum - 1

1 necessary to satisfy the statutory goals for sentencing found in 18
2 U.S.C. § 3553(a).

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4 **I. Status of the Case**

5 On February 18, 2025, Jose Francisco Aguirre was arraigned on
6 the Indictment herein. Less than two months later, on April 10, 2025,
7 Mr. Aguirre pled guilty to Count 1 of the Indictment: Distribution of 50
8 grams or more of actual (pure) methamphetamine, in violation of 21 §§
9 U.S.C. 841(a)(1), (b)(1)(A)(viii).¹
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11 A sentencing hearing is currently scheduled for July 17, 2025, in
12 Yakima, Washington.
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14 **II. Discussion of Sentencing Considerations**

15 **A. Offense Level, Enhancements and Criminal History**
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17 Mr. Aguirre does not have any objections to the calculations in the
18 draft PSR Presentence Investigation Report (“PSR”) disclosed on June
19 5, 2025.² The guideline range was calculated to be 70 to 87 months. Mr.
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22 ¹ ECF 1.

23 ² ECF 26.
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1 Aguirre believes, for the reasons explained below, that a variance below
2 the guideline range is appropriate in this case.

3 **B. Sentencing Factors Under 18 U.S.C. § 3553(a)**
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5 In determining whether a sentence within the advisory guidelines
6 is appropriate, it is important to recall that the over-arching sentencing
7 directive for a sentencing court is to “impose a sentence sufficient, but
8 not greater than necessary to accomplish the goals of sentencing.”
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10 *Kimbrough v. United States*, 128 S.Ct 558, 570 (2007). The advisory
11 sentencing guidelines are only one factor to consider in accomplishing
12 the goals of sentencing as set forth in 18 U.S.C. § 3553(a). *United*
13 *States v. Booker*, 125 S.Ct. 738 (2005).
14

15 A sentencing court cannot presume that a sentence within the
16 advisory guideline range is reasonable. *Nelson v. United States*, 129
17 S.Ct 890 (2009). The guidelines factor cannot be given any more or less
18 weight than any other sentencing factor enumerated in 18 U.S.C. §
19 3553(a). *United States v. Carty*, 520 F.3d 972, 991 (9th Cir. 2008).
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1 1. Nature and circumstance of the offense, and the history and
2 characteristics of Mr. Aguirre. 18 U.S.C. § 3553(a)(1).

3 The nature and circumstances of this offense involved the sale of
4 methamphetamine and fentanyl by Mr. Aguirre to an informant. This
5 offense is certainly serious, and Mr. Aguirre very much regrets his
6 decision to engage in the conduct. Sadly, like so many others who find
7 themselves before the Court for similar charges, Mr. Aguirre's own
8 substance abuse, together with his inability to find any other way to
9 earn a living after seriously injuring himself,³ ultimately led to that
10 decision. But now that he is sober, and his health is deteriorating, his
11 remorse is profound; he is determined never to do anything like this
12 ever again.

13 Mr. Aguirre did not receive much education as a child growing up
14 in a rural part of Mexico, and he has worked in field labor since he was
15 12 years old.⁴ He came to the United States like so many others, in the

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22 ³ PSR ¶¶ 77, 86-87.

23 ⁴ PSR ¶ 75.

1 hope of working hard and having a better life. He married and raised
2 seven children,⁵ but things all started to fall apart after he was injured,
3 lost his job, and became a regular user of methamphetamine.⁶ While his
4 addiction was not so severe that he suffered withdrawals in jail, he does
5 acknowledge that his use of drugs (combined with his injury and the
6 loss of his ability to work in the agricultural field) were clearly what led
7 him to engage in the offense conduct. He also recognizes that he could
8 benefit from treatment.⁷

11 **2. The need for the sentence imposed to reflect the seriousness of**
12 **the offense, promote respect for the law, and to provide just**
13 **punishment.** 18 U.S.C. § 3553(a)(2)(A).

14 The recommended sentence reflects the seriousness of the offense
15 because it is a sentence of imprisonment, for an individual who has
16 never spent more than a month in jail.⁸ Mr. Aguirre has repeatedly
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20 ⁵ PSR ¶ 76.

21 ⁶ PSR ¶ 83.

22 ⁷ *Id.*

23 ⁸ PSR ¶¶ 44-52.

1 expressed how difficult it is to be incarcerated, particularly given his
2 fragile health conditions.⁹ He is determined to never find himself in
3 such a position again.

4
5 Mr. Aguirre believes that a sentence of 12 months plus one day, to
6 be followed by five (5) years of supervised release, is a just punishment
7 given his difficult life circumstances, his very timely acceptance of
8 responsibility, and all the collateral consequences he faces based on this
9 conviction, as discussed below.

11 **3. The need for the sentence imposed to afford adequate deterrence**
12 **to criminal conduct.** 18 U.S.C. § 3553(a)(2)(B).

13 The Court must also consider what sentence is appropriate to
14 provide deterrence, both generally and specifically as to the individual.
15 Deterrence was long thought to be what Congress intended to achieve
16 with mandatory minimum sentences in drug-trafficking offenses. But
17 Congress scaled back on many of those minimums with its passage of
18 the *First Step Act*, Pub. L. No. 115-391. This legislation signaled a
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23 ⁹ PSR ¶ 77.

1 recognition by lawmakers that decades-long prison sentences have not
2 had the intended effect in terms of deterrence, along with the goal of
3 improving outcomes by offering inmates access to evidence-based
4 rehabilitation programs. Many writers urging the passage of the Act
5 noted the increasing realization of this fact:
6

7 There is little evidence that lengthy prison terms serve specific
8 deterrence. Rather, imprisonment either has no effect on an
9 inmate's future offending or perhaps even increases recidivism.
10 This is hardly surprising given the absence of meaningful
11 rehabilitative programs for inmates and, worse yet, the deplorable
12 conditions of incarceration facilities. It has often been argued that
13 prisons serve as “colleges for criminals,” where offenders are
14 psychologically damaged by incarceration, for instance, or learn
15 new anti-social skills from their criminally involved peers, and
16 thus come out more likely to recidivate ... [a]s for general
deterrence, research has largely failed to show that mandatory
minimums decrease the commission of crime, and some studies
suggest that such punishment schemes may even generate more
serious crime.

17 Erik Luna, *Mandatory Minimums*, 4 Reforming Criminal Justice 117,
18 128-129.¹⁰
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23 ¹⁰[http://academyforjustice.org/wpcontent/uploads/2017/10/7_Criminal_J](http://academyforjustice.org/wpcontent/uploads/2017/10/7_Criminal_Justice_Reform_Vol_4_Mandatory-Minimums.pdf)
24 [ustice Reform Vol 4 Mandatory-Minimums.pdf](http://academyforjustice.org/wpcontent/uploads/2017/10/7_Criminal_Justice_Reform_Vol_4_Mandatory-Minimums.pdf).

1 Mr. Aguirre's offense conduct was serious, but he will pay a heavy
2 price for it regardless of the sentence ultimately imposed. He has
3 clearly learned the lesson that this Court would be hopeful that he
4 would, and a period of incarceration longer than 12 months and one day
5 would be greater than necessary to fulfill the goal of deterrence.
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7 **4. The need for the sentence imposed to provide Mr. Aguirre with**
8 **needed educational or vocational training, medical care, or other**
9 **correctional treatment in the most effective manner.** 18 U.S.C.
10 **§ 3553(a)(2)(D).**

11 Mr. Aguirre has significant health needs, which in undersigned
12 counsel's experience, the Bureau of Prisons is unlikely to be able to
13 adequately provide. He is extremely fearful that he may lose a leg due
14 to the complications of his diabetes,¹¹ and this possibility will likely be
15 much greater in a prison setting, where immediate interventions aren't
16 always as readily available as they would be otherwise.
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19 In addition, a prison sentence would likely be more onerous for
20 Mr. Aguirre due to his status and the fact that he will almost certainly
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23 ¹¹ PSR ¶ 77.
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1 have a detainer lodged while there, so he would be ineligible for First
2 Step Act and related programming, and early release to a Residential
3 Reentry Center. A prison sentence will not afford him the opportunity
4 for truly meaningful rehabilitation and training, as BOP has taken
5 deliberate steps to limit the availability of such programs to those with
6 his status. As a result, a lengthy period of imprisonment is
7 unwarranted and potentially useless, in terms of the sentencing goals
8 of treatment, educational and vocational training and medical care.
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11 BOP excludes undocumented individuals subject to removal from
12 a litany of programming options, including the RDAP program.¹²
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14 Deportable inmates are also prohibited from participating in the BOP's
15 "compensated job-training program, Federal Prison Industries . . . [,] its
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19 ¹² See Jacob Schuman, *Federal Prisons Don't Even Try to Rehabilitate*
20 *the Undocumented*, THE MARSHALL PROJECT (Oct. 17, 2017, 10:00 PM),
21 [https://www.themarshallproject.org/2017/10/17/federal-prisons-don-t-](https://www.themarshallproject.org/2017/10/17/federal-prisons-don-t-even-try-to-rehabilitate-the-undocumented)
22 [even-try-to-rehabilitate-the-undocumented](https://www.themarshallproject.org/2017/10/17/federal-prisons-don-t-even-try-to-rehabilitate-the-undocumented); see also BOP Program
23 Statement P5330.11 (Psychology Treatment Programs), § 550.53, Ex. 1
24 (noting "[a] deportable inmate is unqualified for the RDAP program"),
available at https://www.bop.gov/policy/progstat/5330_011.pdf#page=23.

1 reentry-focused Release Preparation Program and even from its faith-
2 based Life Connections Program.” *Id.*

3 For these reasons relating to his status and likely removal from
4 the United States, in addition to the mitigating circumstances
5 described above, Mr. Aguirre believes that a downward variance from
6 the guideline range is appropriate in this case. *See United States v.*
7 *Smith*, 27 F.3d 649 (D.C. Cir. 1994); *United States v. Charry Cubillos*,
8 91 F.3d 1342 (9th Cir. 1996).
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11 **5. The need to avoid unwarranted sentence disparities, and the**
12 **flaws in the methamphetamine guidelines.**

13 According to the United States Sentencing Commission’s
14 Judiciary Sentencing Information (“JSIN”) data, those defendants with
15 the same range as Mr. Aguirre, for the same offense and criminal
16 history category, the average length of imprisonment was 35 months
17 and the median length of imprisonment was just 30 months.¹³ Also
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22 ¹³ <https://jsin.ussc.gov/analytics/saw.dll?Dashboard> (last visited June
23 20, 2025).

1 noteworthy is the fact that, while 98% of defendants did receive a
2 sentence of imprisonment, **35 individuals** received a sentence of
3 probation or a fine only (and that is not even including those who
4 provided substantial assistance). In addition, 76% of those defendants
5 received a downward variance from the guideline range and **none**
6 received an upward variance—which is unsurprising, given how flawed
7 the methamphetamine guideline has been noted to be.
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10 The Ninth Circuit has upheld categorical rejection of Guidelines
11 based on policy grounds for the sentencing disparity between actual
12 and mixture methamphetamine in addition to crack cocaine and
13 powder cocaine, and for child pornography offenses.¹⁴ And a significant
14 number of district courts have rejected the purity-based guidelines
15 (applying guidelines for methamphetamine-mixture base levels
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21 ¹⁴ See *U.S. v. Hoover*, 2018 WL 5924500, at *4 (D. Idaho Nov. 13, 2018)
22 (Winmill, J); *Mitchell*, 624 F. 3d at 1030; *U.S. v. Henderson*, 649 F.3d at
23 964.

1 instead) citing a variance based on a categorical policy disagreement.¹⁵

2 Courts are entitled to disagree with application of the Guidelines
3 themselves on a policy basis, particularly where the guidelines “do not
4 exemplify the Commission’s exercise of its characteristic institutional
5 role[,]” which is “to base its determinations on empirical data and
6 national experience.”¹⁶ Courts rejecting the application of purity-based
7 Guidelines have found, across the board, that the Sentencing
8 Commission did not rely on any empirical data or rationale to justify
9 the sentencing disparities between actual/pure methamphetamine and
10 mixture methamphetamine.¹⁷
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16 ¹⁵ See *Hoover*, WL 5924500, at *4 (Winmill, J); *Grover*, 2017 WL
17 2804012, at *4 (Winmill, J); *U.S. Hartle*, 2017 WL 2608221, at *4 (D.
18 Idaho June 15, 2017); *U.S. v. Ferguson*, 2018 WL 3682509, at *3-4 (D.
19 Minn. Aug. 2, 2018); *U.S. v. Saldana*, 2018 U.S. Dist. LEXIS 110790, at
*7-10 (W.D. Mich. July 3, 2018); *U.S. v. Harry*, 313 F. Supp. 3d 969, 974
(N.D. Iowa 2018).

20 ¹⁶ *Kimbrough*, 552 U.S. at 109.

21 ¹⁷ Courts have held that purity-based penalties unreasonably skew
22 sentences for low-level offenders. See e.g. *U.S. Hayes*, 948 F.Supp.2d
23 1009 (2013) (where the offender had no knowledge of the purity of
24 methamphetamine in their possession); *U.S. v. Ortega*, 2010 WL

1 The Sentencing Commission made drug purity relevant in part
2 because “possession of unusually pure narcotics may indicate a
3 prominent role in the criminal enterprise and proximity to the source of
4 the drugs.”¹⁸ Yet methamphetamine seized at all distribution levels is
5 remarkably pure, making sentencing variation based on purity testing
6 outdated, arbitrary, and ultimately unjust.¹⁹ The Commission departed
7 from its characteristic institutional role, using no empirical data to
8 justify the 10:1 ratio. Thus, the Court is warranted in disagreeing with
9 the policy of methamphetamine purity-based Guidelines and imposing a
10 variance in this case.
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17 1994870 (D. Neb. May 17, 2020) (purity-based penalties blur the
18 distinction between high and low level distributors).

19 ¹⁸ §2D1.1 cmt.9; *Grover*, 2017 WL 2804012, at 3 n.4 (“although [§2D1.1
20 cmt.9] does not apply directly to methamphetamine, the purity-based []
21 penalties evidences this same assumption.”).

22 ¹⁹ In 2018 the national average purity of methamphetamine was over
23 90%, and only increasing. *U.S. v. Bean*, 371 F. Supp. 3d 46, 52 (D.N.H.
24 2019) (citing 2018 DEA National Drug Threat Assessment).

Conclusion

Mr. Aguirre understands that he involved himself in a serious crime, and he is very remorseful for his conduct. He took immediate responsibility for his conduct, and he has made clear that he will never engage in anything like this in the future. Mr. Aguirre respectfully recommends a sentence of 12 months plus one day, to be followed by five (5) years of supervised release.

Dated: June 20, 2025.

Respectfully Submitted,

By s/ Jennifer R. Barnes

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CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Bree Black Horse, Assistant United States Attorney.

By s/ Jennifer R. Barnes
Jennifer R. Barnes, 23664